

V1.6-8

**Faith Lynn Brashear**

Plaintiff /Witness/ Advocate

In RE: 1095 Lowry Ranch Road

Corona, CA 92881

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FILED

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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELESBY: 

**FEDERAL COURT OF CALIFORNIA**  
**FOR THE ~~COUNTY~~ OF LOS ANGELES, CENTRAL DISTRICT**

FAITH LYNN BRASHEAR, an  
 individual, Plaintiff

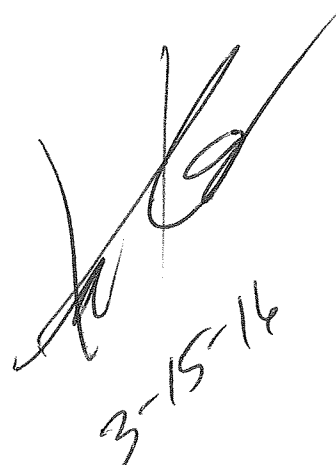
vs.

HSBC BANK USA, NATIONAL  
 ASSOCIATION, as Trustee of the Holders  
 of the Deutsche Alt-A Securities, Inc.,  
 Mortgage Loan Trust, Mortgage Pass-  
 Through Certificates Series 2007-OA4;  
 CHARLES G. MEYER JR Director,  
 HSBC Bank USA, N.A.  
 THE MORTGAGE LAW FIRM, PLC, as  
 Trustee and Agent of a Beneficiary; as  
 agent for Wells Fargo Bank, N.A.;  
 DARREN J. DEVLIN, President of of The  
 Mortgage Law Firm, PLC;  
 SPECIALIZED LOAN SERVICING LLC,  
 as servicer for HSBC Bank USA, National  
 Association, as Trustee for the Holders of  
 the Deutsche Alt-A Securities, Inc.,  
 Mortgage loan Trust, Mortgage Pass-  
 Through Certificates Series 2007 -OA4;  
 MARK MCCLOSKEY Assistant Vice  
 President of Specialized Loan Servicing  
 LLC, and All persons and entities claiming  
 any right to real property located at 1095  
 Lowry Ranch Road Corona, California  
 92881 and Does 1-20, inclusively,

Defendants

ED CV 16-469-TJH (KKx)  
 CASE NO.

**EXHIBIT J- Testimony of DeMartini  
 in Kemp vs. Countrywide in RE:  
 Notes never left the file**



**COMPLAINT OF THE PLAINTIFF/ DEBTOR PURSUANT TO 42 U.S.C. Sec 1983**  
 FALSE CLAIMS 31 U.S. Code § 3729 (a) (C), violations of US Constitutional Amendments,  
 5<sup>th</sup>, 8<sup>th</sup> 9<sup>th</sup> and 14<sup>th</sup>. Adversary Trial for Summary Judgment, Declaratory and Injunctive relief.

IN THE UNITED STATES BANKRUPTCY COURT

EXHIBIT J

DISTRICT OF NEW JERSEY

IN RE: ) Bankruptcy No. 08-18700

))

)

JOHN T. KEMP, )

)

Debtor. )

-----)

)

JOHN T. KEMP, ) Adversary No. 08-02448

)

Plaintiff, )

)

vs. )

)

COUNTRYWIDE HOME LOANS, INC., ) Camden, New Jersey

) August 11, 2009

Defendant. ) 10:24 a.m.

)

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TRANSCRIPT OF HEARING

BEFORE THE HONORABLE JUDITH H. WIZMUR

UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Plaintiff: BRUCE LEVITT, ESQUIRE

LEVITT & SLAFKES, PC

76 South Orange Avenue, Suite 305

South Orange, New Jersey, 07079

Cherry Hill, New Jersey 08003

For the Defendant: HAROLD KAPLAN, ESQUIRE

FRENKEL, LAMBERT, WEISS, WEISMAN

& GORDON, LLP

80 Main Street, Suite 460

West Orange, New Jersey 07052

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DeMartini - Cross 8

1 have originated it, we are the ones that have always serviced  
2 it.

3 Q Today who is the owner of the loan?

4 A Bank of New York.

5 Q Bank of New York?

6 A As -- as the trustee for the certificate holder CWABS,

7 Asset-Backed Securities series number --

8 Q And who is in possession of the note?

9 A Who is in possession of the note? We have the note in our  
10 origination file.

11 Q So -- so Bank of New York as trustee does not hold the

12 note, is that correct, or is not in possession of the note?

13 A The original note to my knowledge is in the origination

14 file.

15 Q Where is the -- do you have it here today?

16 A No, I don't have it with me here today.

17 Q So you don't have the note?

18 A It's in our office.

19 Q So it's in your office, it's not with this trust that owns  
20 the -- that's supposedly holds the -- or is the owner of this  
21 note, is that correct?

22 A That's correct.

23 Q And your testimony is that this allonge was never  
24 submitted to -- it was never in the possession of Bank of New  
25 York as trustee for the certificate holder, is that correct?  
DeMartini - Cross 9

1 MR. KAPLAN: Your Honor, I object. Countrywide or  
2 Bank of America is the servicer. They possess and hold all  
3 the documents.

4 THE COURT: Don't give me an argument, that's not an  
5 objection to the question. I don't mean to be -- to cut your  
6 off, but you're welcome to make that argument bottom line, but  
7 that's a perfectly proper question.

8 BY MR. LEVITT:

9 Q And this allonge, it's a stand-alone document, correct?

10 It's not attached to anything, is that correct?

11 A I'm not sure I'm understanding your question.

12 Q Was there anything -- when you brought the original that's  
13 in front of you, did you remove it? Was it stapled to  
14 something else?

15 A No, it wouldn't have necessarily been stapled to something  
16 else. There would have probably been other documents showing  
17 the -- you know, we would have shown her the note. We would  
18 have reviewed all of that before.

19 Q And where are all the documents that you showed her?

20 A Well, I have copies of -- I have a copy of the note, I  
21 have a copy of the deed with me here today.

22 Q And those --

23 A They're signed copies.

24 Q Can you show me exactly the documents that you showed her  
25 when you had her sign this allonge?

And again there, Your Honor, if my position is the  
23 trust has to be in possession of the note and the trust has to  
24 prove that it took possession and if we're going to deal with  
25 the Pooling and Servicing Agreement -- and, Your Honor, one of  
Colloquy 39

1 the reasons why I wasn't moving it into evidence was because  
2 to me it wasn't competent evidence at this point, again, it  
3 wasn't my burden, but if counsel is going to find the  
4 legitimate document that's recorded with the SEC, well that's  
5 going to be the Bible, Your Honor, and that's going to say  
6 that this note had to be delivered.

7 Whether it ultimately ended up with the trust --

8 with the servicer, the Pooling and Servicing Agreement, if  
9 it's at all close to this draft or like every other Pooling  
10 and Servicing Agreement I've read, it's going to say it would  
11 have had to be physically transferred first from Countrywide  
12 was the originator to the depositor, and then from the  
13 depositor ultimately to the trust.

14 **The physical documents according to the Pooling and**  
15 **Servicing have to be transferred and in this document you're**  
16 **going to see it had to be endorsed. We're not going to have**  
17 **that here. So if they can prove that these documents were**  
18 **physically transferred, meaning there's delivery receipts**  
19 **showing they were physically transferred from A to B, from B**  
20 **to C, and if C decided to let its agent hold them, I think,**  
21 **Your Honor --**

22 **THE COURT:** Well, there's no question on this record  
23 and, you know, I'm ready to accept it as fact that these  
24 original documents never moved. I mean, that was the  
25 testimony.

#### Colloquy 40

1 MR. LEVITT: And if that's the case, Your Honor, I  
2 think we're done because unless the documents were physically  
3 transferred, the trust ultimately could decide to let its  
4 agent -- you know, Countrywide here, despite the witness's  
5 beliefs and assertions, Countrywide here is wearing two  
6 different hats, it's wearing the hat as Countrywide Home  
7 Mortgage, the one that originated these mortgages, packaged  
8 them and got rid of them as quickly as they possibly could,  
9 that's hat number one, and then as another way to make money,  
10 they're a servicer.

11 THE COURT: Right.

12 MR. LEVITT: So it's two different -- from all  
13 practical purposes and in fact I think the Pooling and  
14 Servicing Agreement will show, it's two separate and distinct  
15 legal entities, both Countrywide entities, now Bank of America  
16 entities. So if A, which is Countrywide the originator, ended  
17 up securitizing and selling this loan they would have had to  
18 have followed the terms of the Pooling and Servicing Agreement  
19 to get it into the hands of the trust and then D, which is  
20 Countrywide the servicer, could have gotten possession. And  
21 even if it meant -- even if they stayed in the same vault but  
22 if it meant that there was a delivery receipt from A to D or A  
23 to B to C to D, that's what they have to prove.  
24 And because they're saying that, now maybe they do  
25 have those delivery receipts and if they want to produce them